

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JASON RATCLIFF, *et al.*,

Plaintiffs,

Case No. 1:05-cv-582

vs.

Spiegel, J.
Black, M.J.

ERNIE MOORE, *et al.*,

Defendants.

**REPORT AND RECOMMENDATION¹ THAT ALL PENDING MOTIONS BE
DENIED WITHOUT PREJUDICE (Docs. 19, 22, 23, 25, 27, 28) DUE TO
PLAINTIFFS' FAILURE TO PROPERLY EFFECT SERVICE UPON
ANY OF THE DEFENDANTS**

The Court previously entered a Show Cause Order in this civil action, advising the Plaintiffs that their complaint would be dismissed for failure to effect proper and timely service of process of the summons and complaint upon the named Defendants if Plaintiffs failed to show cause why their complaint should not be dismissed for failure of service of process. (*See* Doc. 31 (citing *Habib v. General Motors Corp.*, 15 F.3d 72, 73 (6th Cir. 1994); *United States v. Gluklick*, 801 F.2d 834, 836-37 (6th Cir. 1986)).

In response to the Show Cause Order, Kelsey Ratcliff, a non-party and wife of *pro se* plaintiff Jason Ratcliff, submitted an affidavit along with certified mail return receipts allegedly showing that each of the named Defendants had received a copy of the summons and complaint. (Doc. 32, Ex. 1.) However, the documents submitted by Ms. Ratcliff do not establish that the named Defendants have been served in compliance with

¹ Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

Ohio certified mail service pursuant to S.D.Ohio Civ. R. 4.2.

Here, the record remains does not evidence that Plaintiffs have properly served Defendants with the summons and complaint (*i.e.*, no returned executed summons have been filed with the Court in accordance with S.D.Ohio Civ. R. 4.2). *See* Order of today (Doc. 34).

Although the time deadline set forth in the Show Cause Order has now passed without Plaintiffs having properly effectuated service upon the named Defendants pursuant to Federal Rule of Civil Procedure 4(i)(1)(A) and S.D.Ohio Civ. R. 4.2, the undersigned has entered today another Order (Doc. 34) directing Plaintiffs to effect service properly (which Order includes very specific instructions).

However, because Plaintiffs have not properly nor timely effected service, the Court continues to lack jurisdiction over any Defendant, and, accordingly, the undersigned **RECOMMENDS** that all of Plaintiffs' pending motions (docs. 19, 22, 23, 25, 27, 28) be **DENIED** without prejudice, subject to refiling, if necessary, after Plaintiffs establish that the Defendants have been properly served with the summons and complaint.

Date: August 15, 2006

s/ Timothy S. Black
Timothy S. Black
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report and Recommendation within **TEN DAYS** after the date this Report and Recommendation is stamped “filed” by the Clerk of Court. This period may be extended by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the Report and Recommendation objected to, and shall be accompanied by a memorandum of law in support of the objections. A party may respond to an opponent’s objections within **TEN DAYS** after being served with a copy those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).